

REMARKS

Claims 20-27 and 47-57 are pending, with claims 48 and 51 withdrawn pending the allowance of a generic or a linking claim. By this Amendment, claims 28-37 are cancelled without prejudice, claims 20, 47, 53, 55, and 57 are amended. Claim 55 is amended to correct a typographic error. Claims 53 and 57 are made independent by including limitations from the base claim. Claims 20 and 47 are amended to more specifically point out the claimed invention. Support for the amendment to claims 20 and 47 can be found for example from page 10, line 1 to page 11, line 24. No new matter is added.

Claims 20, 21, 24-26, 28-35, 37, 47, 54, 55 and 57 stand rejected. Claims 22, 23, 27, 49, 50, 52, 53 and 56 have been found allowable and are presently objected to for depending on a rejected base claim. Applicant respectfully requests reconsideration of the rejections based on the following remarks.

Allowable Subject Matter

The applicants thank the Examiner for outlining the allowable subject matter on page 9 of the Office Action. Claim 53 has been amended to be independent and to incorporate all the limitations of the base claim as advised by the Examiner. Amended Claim 53 therefore is allowable. Prompt allowance of claim 53 is respectfully requested.

Claim Objections

Claim 57 was objected to because of informalities. Claim 57 has been amended to be independent and to include all the limitations from the base claim. The amendment of claim 57 obviates the objection, withdrawal of the objection is respectfully requested.

35 U.S.C. §112 First Paragraph Rejection

Claims 34, 35, and 37 were rejected under 35 U.S.C. §112 se paragraph, as failing to comply with the written description requirement. Claims 34, 35, and 37 are cancelled without prejudice. The cancellation of the claims 34, 35, and 37 renders the rejection moot. Withdrawal of the rejection is respectfully requested.

35 U.S.C. §102(b) Rejection

Claims 20, 25, 26, 47, 54, 55, and 57 were rejected under 35 U.S.C. §102(d) as being anticipated by Vaughn et al (“Expanded Surface Area Fibers: A Means for Medical Product Enhancement”). Respectfully, Vaughn does not teach all of the elements of Applicants’ claimed invention. Applicants request reconsideration of the rejection based on the following comments.

The Examiner has the burden of establishing a *prima facie* case of anticipation. As such, the Examiner must provide a reference that discloses every element as set forth in the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 814 F2d. 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (MPEP §2131).

“Every element of the claimed invention must be literally present, arranged as in the claim. **The identical invention must be shown in as complete detail as is contained in the patent claim.**” Richardson v. U.S. Suzuki Motor Corp., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)(Internal citations omitted, and emphasis added.); see also MPEP 2131. “Here, as well, anticipation is **not** shown by a prior art disclosure which is only ‘substantially the same’ as the claimed invention.” Jamesbury Corp. v. Litton Industrial Products, Inc., 225 USPQ 253, 256 (Fed. Cir. 1985)(emphasis added).

First, Vaughn teaches release of a "material" and not a biological active agent, as claimed. Also, the Examiner cited devices list on page 310 of Vaughn as disclosing that the medical device is a percutaneous device or an implantable device as the device may be any of those listed on page 310 such as absorbent burn pads, bandages with bacteria barriers, medicated wound dressings, surgically sponges, or transdermal wound dressing (bottom of page 4 of the Office Action). Independent claims 20 and 47 are amended to specify that the claimed percutaneous device has surface capillaries associated with a portion of the device to be placed within the patient or the device is an implantable device. Vaughn does not teach percutaneous devices with surface capillaries associated with a portion of the device to be placed within the patient or an implantable device. Vaughn therefore does not disclose each and every element of the claimed invention in claims 20 and 47 and does not render claims 20 and 47 *prima facie* anticipated. Withdrawal of the rejection is respectfully requested. Applicants do not acquiesce with respect to the specific issues relating to the dependent claims, but these issues are not commented on further here due to the deficiencies with respect to the independent claims above.

With regard to claim 57, the Examiner cited lines 1-20 of page 305 of Vaughn. Respectfully, lines 1-20 of page 305 or anywhere else of Vaughn do not disclose the bioactive agent is pre-loaded into the polymer of the surface capillary fibers. Claim 57 is amended to incorporate all the limitations from the base claim and made independent. Vaughn does not disclose each and every element of claim 57 and does not render claim 57 *prima facie* anticipated. Withdrawal of the rejection to claim 57 and prompt allowance is respectfully requested.

35 U.S.C. §103(a) Rejections

I. Claims 21 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Vaughn et al in view of Lorenz et al. (U.S. Patent No. 5,156,601). Claims 21 and 24 depend

from claim 20. As discussed in the above section, Vaughn does not teach or suggest percutaneous devices with surface capillaries associated with a portion of the device to be placed within the patient or an implantable device of claim 20. Lorenz is cited only with respect to the delivery of certain biological agents. Lorenz is directed to a gel used for a wound dressing. Lorenz therefore does not make up for the deficiencies of Vaughn. Vaughn and Lorenz alone or combined therefore does not teach or suggest each and every element of the claimed invention in claim 20 and does not render claims 20 and its dependent claims 21 and 24 *prima facie* obvious. Withdrawal of the rejection is respectfully requested.

II. Claims 28-31, 33-35, and 37 are rejected under 35 U.S.C. §103(a) as being unpatentable over Olsen et al (U.S. Patent No. 7,326,196). Claims 28-37 are cancelled without prejudice. The rejection is moot in view of the cancellation of claims 28-37. Withdrawal of the rejection is respectfully requested.

III. Claim 32 is rejected under 35 U.S.C. §103(a) as being unpatentable over Olsen et al. in view of DiCarlo et al. (U.S. Patent No. 6,929,626). Claim 32 is cancelled without prejudice. The rejection is moot in view of the cancellation of claim 32. Withdrawal of the rejection is respectfully requested.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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